IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

SATURDAY, THE 18TH AUGUST 2007 / 27TH SRAVANA 1929

OP.No. 12562 of 1997(U)

PETITIONER:

C.V. THOMAS, S/O. K.T. VARGHESE, SENIOR ASSISTANT, OFFICE OF THE DIRECTOR OF RESEARCH ORGANISATION, KERALA STATE ELECTRICITY BOARD, POST PALLAM, KOTTAYAM -7.

BY ADV. SRI.P.M.MOHAMMED SHIRAZ.

RESPONDENTS:
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1. **KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM, REPRESENTED BY ITS SECRETARY.**

2. **THE CHAIRMAN,KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**

3. **THE CHIEF ENGINEER (ELECTRICITY GENERAL), KERALA STATE ELECTRICITY BOARD, VAIDYUTHI BHAVAN, PATTOM, THIRUVANANTHAPURAM.**

BY ADV.SRI.C.K.KARUNAKARAN, SC FOR KSEB.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 18/08/2007,ALONG WITH O.P. NO. 30476/2002, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

prv.

O.P. NO. 12562/1997:

ORDER ON C.M.P. NO. 22362/1997 IN O.P. NO. 12562/1997

DISMISSED

18/08/2007. **SD/- T.R.RAMACHANDRAN NAIR, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE MEMO OF CHARGES DTD. 10/07/1985 ISSUED BY THE R.3. TO PETITIONER ALONG WITH STATEMENT OF LIABILITY.

EXT.P.2: COPY OF THE REPLY TO EXT.P.1 SUBMITTED BY PETITIONER DTD. 09/08/1985.

EXT.P.3: COPY OF THE ENQUIRY REPORT OF THE DISCIPLINARY ENQUIRY OFFICER DTD. 01/04/1987.

EXT.P.4: COPY OF THE SHOW CAUSE NOTICE DTD. 17/03/1990 ISSUED BY THE R.3. TO THE PETITIONER.

EXT.P.5: COPY OF THE REPLY TO EXT.P.4 SUBMITTED BY PETITIONER ON 26/03/90.

EXT.P.6: COPY OF THE SHOW CAUSE NOTICE DTD. 01/08/1994 ISSUED BY THE R.3. TO THE PETITIONER.

EXT.P.7: COPY OF THE REPLY TO EXT.P.6 FILED BY PETITIONER, DTD. 08/08/1994.

EXT.P.8: COPY OF THE ORDER OF REVERSION AND PENALTY ISSUED BY THE R.3. DTD. 09/11/1994 TO PETITIONER.

EXT.P.9: COPY OF THE APPEAL FILED BY PETITIONER BEFORE R.2. DTD. 21/11/1994 AGAINST EXT.P.8.

EXT.P.10: COPY OF THE ORDER ON EXT.P.9 BY THE R.2. DTD. 30/06/1997.

EXT.P.11: COPY OF THE LETTER DTD. 03/08/1985 ISSUED BY THE EXECUTIVE ENGINEER, ANGAMALY TO THE EXECUTIVE ENGINEER, PALAI.

EXT.P.12: COPY OF THE LETTER DTD. 10/09/1984 BY THE EXECUTIVE ENGINEER, PALAI TO THE EXECUTIVE ENGINEER, ANGAMALY.

//TRUE COPY//

prv.

T.R. Ramachandran Nair, J.

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O.P.NOs.12562/1997-C & 30476/2002-C

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Dated this the 18th day of August, 2007

JUDGMENT

The petitioner is the same in both the writ petitions. O.P. No.12562/1997 concerns the challenge against the disciplinary proceedings culminating in Ext.P10 order. O.P.No.30476/2002 relates to the claim for payment of pensionary benefits like gratuity and other amounts in the pay scale of Senior Superintendent.

2. The petitioner was working as Asst. Store Keeper in Angamaly and while so, he was transferred to Palai as per order dated 29.5.1984 of the third respondent. He was relieved on the forenoon of 1.6.1984 as per order dated 1.6.1984 of the Executive Engineer, Transmission Stores Division, Angamaly with a direction to join at Palai immediately. Therefore, he was relieved and then joined at Palai. After he was relieved, the Executive Engineer and Asst. Executive Engineer, Transmission Store Division, Angamaly had assumed charge of all the materials kept in the Store at Angamaly which were in the custody of the petitioner prior to his transfer from that centre. Later, he was called back and was asked to verify the materials at Angamaly pursuant to which, the said process was undertaken

between 18.6.1984 to 4.8.1984. After that, he returned to Palai. He was issued with Ext.P1 memo of charges dated 10.7.1985. The two charges were: (i) failed to hand over charge of the transmission stores at Angamaly promptly and properly; and (ii) misappropriated materials of the Electricity Board valuing to Rs.1,93,630.39 as detailed in the statement attached. This was replied by the petitioner as per Ext.P2. The enquiry was conducted by the Law Officer of the Board in the cadre of District Judge. Ext.P3 is the report of the enquiry wherein he was exonerated of the charges. This report is dated 1.4.1987. Three years later, he was issued a show cause notice dated 17.3.1990 by the disciplinary authority, who has chosen to differ with the findings of the enquiry officer and entered a finding that the petitioner is guilty of the charges levelled against him. The penalties of reversion to the post of Junior Assistant for a period of three years and recovery of an amount of Rs.1,93,630.39 fixed as liability on account of the misappropriation of materials, were proposed. The petitioner submitted a reply as per Ext.P5. In the reply, the petitioner apart from denying his liability, pointed out that when the disciplinary authority has chosen to differ from the findings of the enquiry officer, that can only be based on the analysis of the materials on record of the enquiry and the show cause notice does not disclose real appreciation of the evidence on record. It was also

pointed out that the reasons for disagreeing with the findings of the enquiry officer are not disclosed in the show cause notice with reference to the oral and documentary evidence. Again four years later, by Ext.P6 a fresh show cause notice was issued with the only difference that the amount of liability has come down to Rs.73,083/-. This apparently is after deducting the value of materials found excess, viz., Rs.45,585/-. Ext.P7 is the reply submitted by the petitioner. Finally, by Ext.P8, the disciplinary authority imposed the punishment of reversion to the post of Junior Assistant for a period of three years and fixation of liability to the tune of Rs.73,083/-. He filed appeal against the same before the Chairman evidenced by Ext.P9. The said appeal was rejected as per Ext.P10. The punishment of reversion was confirmed but the liability was refixed to Rs.40,076.75. The petitioner is challenging the orders imposing penalty and the order passed in appeal.

3. The Board has filed a counter affidavit explaining the circumstances under which the punishment was imposed.

4. Heard learned counsel for the petitioner and learned Standing Counsel for the Board. Learned counsel for the petitioner submitted that this is a case where the enquiry officer has exonerated the petitioner of the two charges on cogent materials. The enquiry officer has clearly entered findings on three aspects, going by the report Ext.P3, that after the

petitioner relinquished his charge pursuant to the transfer to the new office at Palai, the materials which were in his custody were issued in the presence of either Assistant Engineer or Assistant Executive Engineer or Chief Store-keeper in accordance with the directions of PW.1 (Executive Engineer). Learned counsel also submitted that there is a clear finding in Ext.P3 to show that after he was relieved on 1.6.1984, without providing him with an opportunity to effect proper handing over of the materials in his custody, it was the duty of PW.1 or his subordinate officers to take an inventory of the materials in the custody of the delinquent officer before making any kind of issue from those materials under any circumstance. On the other hand, during the absence of the delinquent officer, they had issued many materials which were handled by the delinquent officer, prior to 18.6.1984. There is also a clear finding that since the inventory of materials was not prepared as on 1.6.1984, the interference with those materials by P.W.1 and subordinate officers who issued those materials in the absence of the delinquent officer has deprived the Board of its right to proceed against the delinquent officer for the alleged shortage of materials. Therefore, it is a clear case where the petitioner cannot be found fault with the misappropriation alleged. It was further argued that before issuance of Ext.P4, he was not issued any notice giving an opportunity to object or a

hearing on the issue as to the acceptability of Ext.P3 report. In fact, the report itself was forwarded along with Ext.P4 only. It is therefore contended that when the disciplinary authority has chosen to differ from the finding of the enquiry officer, before proposing the penalty, he should have heard the petitioner on the tentative reasons as to why the disciplinary authority is disagreeing with the findings of the enquiry officer. No such tentative reasons have been communicated to him with opportunity to object. Reliance is placed by the learned counsel for the petitioner upon the decision of a Constitution Bench of the Supreme Court in **Punjab National Bank and others v. Kunj Behari Misra** ((1998) 7 SCC 84) which was followed in **Yoginath D. Bagde v. State of Maharashtra and another** ((1999) 7 SCC 739). It was also pointed out that the appellate authority has also not correctly appreciated the legal and factual aspects. It was further pointed out that at any rate, in the show cause notice issued, there is no clear finding as to his liability in the sense about the shortage of materials while they were in his own legal custody and in the absence of the same, it is contended that he cannot be made liable for the misappropriation, if any.

5. Therefore, the issue has to be considered in the light of the well known principles of natural justice. Here is a case where the enquiry officer

clearly found that the charges have not been proved. But without anything more, the disciplinary authority sought to dissent himself from the findings of the enquiry officer and proposed the penalties as per the show cause notice. The evidence or other materials which prompted him to differ from the findings of the enquiry report have not been stated in Ext.P4. Apart from that, before choosing to differ from the findings of the enquiry officer, the petitioner was not issued any notice conveying the tentative conclusions of the disciplinary authority. This aspect is covered by the decision of the Apex Court in ((1998) 7 SCC 84. Their Lordships considered the question as to whether the principles of natural justice require a further hearing even in spite of absence of a particular provision in the regulation governing the matter. After referring to the regulation that was considered therein, it was held in paragraph 19 as follows:

> "The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of

> misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

This decision was followed in the subsequent decision, i.e. (1999) 7 SCC 739. The legal position was examined in the light of the provisions of Article 311 of the Constitution of India and also in the light of the well accepted principles of natural justice and their Lordships held in paragraph 31 that the method adopted by the disciplinary authority is not correct. The principle was explained in the following terms:

> "In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constituiton as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against hi and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have

> been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

6. Judged in the light of the above principles, the action taken herein by the disciplinary authority is clearly vitiated. It is a a well accepted principle of natural justice that no one shall be condemned unheard. In this case, he was exonerated of the charges by the enquiry officer. The petitioner was well in his rights to assume that no further liability could have been cast upon him. The disciplinary authority before choosing to issue Ext.P4, did not issue any notice giving opportunity to the petitioner to object to the proposals on the non-acceptability of the enquiry report and also about the tentative conclusions arrived at by him to differ from the findings of the enquiry officer. This is a gross irregularity which vitiates the entire proceedings. As the petitioner was entitled to be given an opportunity at that stage, the show cause notice proposing punishment evidenced by Ext.P4 does not stand scrutiny in the eye of law. A reading of Ext.P4 will also show that it is not a case where the disciplinary authority has chosen to differ from the findings based on cogent materials. It is admitted even in the show cause notice that he was relieved consequent on

his transfer on 1.6.1984 on which date the inventory was not taken. The finding rendered is that he did not raise any complaint previously regarding the issue of materials made prior to 18.6.1984 and he had jointly signed the requisition with his successor. In fact, that is not the crucial aspect that should have been weighed with the disciplinary authority. Any way, the matter need not be examined on the merits in detail in the light of the view I propose to take, as regards the violation of the principles of natural justice as evident from the proceedings.

7. The reasons stated in Exts.P8 and P10 are therefore without any legal authority and they are vitiated by non-observance of the principles of natural justice. When the orders suffer from the wise of arbitrariness and violation of principles of natural justice, the consequent action is liable to be set aside on that score. Since the petitioner has already retired from service on 31.5.2001, there is no scope for directing a remand of the matter for a reconsideration by the disciplinary authority also.

8. One more aspect is evident from the proceedings which may have an adverse impact on the same. In this case the enquiry report is dated 1.4.1987. Ext.P4 has been issued only on 17.3.1990, nearly three years thereafter. The modified show cause notice was issued only by Ext.P6 dated 1.8.1994, still four years after the earlier one was issued. Therefore,

there is long delay in finalising the disciplinary proceedings which also is an aspect which should be considered in the light of the view taken by this court and the Apex Court in various decisions. Reference in this connection will be of advantage to the decision of the Supreme Court in **P.V. Mahadevan v. MD T.N. Housing Board** (2005 (6) SCC 636) wherein it was held that "the protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in the public interest and also in the interests of inspiring confidence in the mind of government employee."

9. Therefore, O.P.No.12562/1997 is allowed. Exts.P8 and P10 and all consequential orders issued therein are quashed. It is declared that the disciplinary proceedings taken against the petitioner are illegal and the punishment imposed on him consequently, are invalid.

10. In O.P.No.30476/2002 the petitioner is seeking a direction to compel the respondents to fix the petitioner's pension, gratuity and other benefits in the pay scale of Senior Superintendent. It is averred that even though the punishment was imposed by the disciplinary authority, that too was kept in abeyance during the pendency of the appeal and in O.P.No.12562/1997 there is an interim order in force throughout staying the

proceedings. Meanwhile, he retired from service on 31.5.2001. The respondents have filed a statement wherein they have produced Annexure I, whereby on 7.11.2002 the Board has released an amount of Rs.3,06,069/- towards the DCRG, Commutation and arrears of pension, to the petitioner. Learned counsel for the petitioner points out that Exts.P6 and P7 will show that an amount of Rs.1,79,341.75 has been withheld from the DCRG towards liability in view of the pendency of the orders of punishment issued against him and obviously due to the pendency of O.P.No.12562/1997. Since the disciplinary proceedings have been quashed, the petitioner is entitled to be disbursed the said withheld amount. Learned counsel for the petitioner also points out that the retirement benefits already sanctioned to him, were only in the reverted cadre and not in the cadre of Senior Superintendent (NC) and therefore it will have to be worked out again.

11. Therefore, O.P.No.30476/2002 is disposed of directing the respondents to recompute the retirement benefits including pension, gratuity and other benefits in the cadre of Senior Superintendent (NC) and also to disburse the benefits due to him along with the withheld amount of Rs.1,79,341.35. The respondents are also directed to pass appropriate

orders and disburse the amount legally due to him, within a period of two months from the date of receipt of a copy of this judgment.

The original petitions are disposed of in the above terms. No costs.

(T.R. Ramachandran Nair, Judge.)

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T.R. Ramachandran Nair, J.

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O.P. Nos 12562/1997 and
30476/2002

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JUDGMENT

18th August, 2007.